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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,761	03/23/2004	Inka Henze	2719A	2427

7590 10/26/2005  
STRIKER, STRIKER & STENBY  
103 East Neck Road  
Huntington, NY 11743

EXAMINER

STEIN, STEPHEN J

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/806,761	Applicant(s) HENZE ET AL.	
	Examiner Stephen J. Stein	Art Unit 1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 10/635,950.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/3/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Double Patenting***

2. Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3 and 5-13 of copending Application Serial No. 10/635,050. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed subject matter overlaps with the claims of the '050 application.

3. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Response to Arguments***

4. In view of applicants' amendments to the claims and arguments, the art rejections over the Nakashani and Takahashi references and the 35 USC 101 statutory double patenting rejections have been withdrawn.

In view of the applicants' amended claims, new non-statutory, obviousness-type double patenting rejections have been made over the '050 copending application.

#### ***Conclusion***

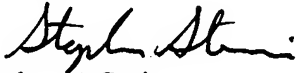
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Stein whose telephone number is 571-272-1544. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m. If the

Art Unit: 1775

attempts to reach the examiner are unsuccessful, the examiner's supervisor, Deborah Jones can be reached by dialing 571-272-1535. The official fax number is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 20, 2005



Stephen J. Stein  
Primary Examiner  
Art Unit 1775